

Remarks:

Status of Claims

Claims 1-23 were previously pending. Claims 1, 8, 10, 13, 14, 15, 16, 18, 19, 21, and 22 are amended herein and claims 24 and 25 are new. Thus, claims 1-25 are currently pending with claims 1, 15, 11, 18, and 21 being independent.

Office Action

In the July 14th, 2005, Office Action, the Examiner rejected all claims under 35 USC 102(b) or 35 USC 103 in view of Schluter (U.S. Publication No. 2002/0059764). Specifically, the Examiner rejected claims 1, 4-5, 8, and 21-22 under 35 USC 102(b) and rejected claims 2-3, 6-7, 9-16, and 18-19 under 35 USC 103. Applicant respectfully submits that the Examiner's rejections are overcome by the amendments made herein as Schluter fails to disclose or suggest the currently claimed features of the present invention. Due to the claim amendments made herein, various independent claims of the present invention are discussed separately below to illuminate the differences between the claimed features of the present invention and Schluter.

Claims 1-14

Claim 1 is amended herein to recite a first bracket ... rigidly attached to one of the first surface, the second surface, and a cover plate; and a second bracket ... rigidly attached to one of the first surface, the second surface, and a cover plate. For example, as described on page 10 of the application, the second bracket may be rigidly attached to the second surface, a central bracket may be non-rigidly attached to the second bracket, and the first bracket may be non-rigidly attached to the central bracket and rigidly attached to the cover plate, such that flexing and bending may be provided by the non-rigid connections.

In contrast, the "brackets" disclosed by Schluter are not operable to rigidly attach to a first surface, a second surface, and a cover plate. Specifically, Schluter's anchoring members 1,2 (which the Examiner considers to be "brackets"), are not operable to attach or otherwise couple to "a cover

plate” as Schluter does not even disclose or suggest a cover plate. Instead, Schluter’s anchoring members are operable to flexibly attach to bridging profiles 3,4 (which the Examiner considers to be a “central bracket”). Thus, Schluter’s anchoring members (brackets) are inoperable to attach to a cover plate as recited by claim 1 because Schluter doesn’t disclose or suggest a cover plate. As a result, Schluter fails to anticipate or render obvious claims 1-14.

Further, assuming *arguendo* that the Examiner considers Schluter’s bridging profiles to be simultaneously a “cover plate” and a “central bracket”, Schluter’s anchoring members (brackets) are inoperable for rigid attachment to the bridging profiles as rigid attachment of the anchoring members to the bridging profiles would prevent the entire joint cover from flexing or bending. Thus, if Schluter’s anchoring members (1, 2) are rigidly attached to the bridging profiles (3, 4) then the entire joint (1-4) is inoperable for its intended purpose, absorbing floor and wall movement (paragraph 0007). As a result, Schluter cannot disclose or suggest the claimed brackets, and claims 1-14 are therefore allowable.

Claims 8 and 10 are additionally patentable over Schluter as they currently recite “the third member and fourth member are rigidly attached and the third member is generally perpendicular to the fourth.” As discussed above, the bridging profiles (2,3) of Schluter, which the Examiner considers to be the equivalent of the third member and fourth member, must be flexibly attached to each other to enable joint movement and thus cannot be “rigidly attached.” Further, Schluter’s bridging profiles must be parallel, as is described in more detail below, to enable the two profiles 2,3 to form a flat profile for tiling “walls or floors” (abstract and paragraph 0007). In contrast, the present invention preferably provides the third member perpendicular to the fourth member to enable proper coupling with the brackets and cover plate, which Schluter entirely lacks.

Claims 11 and 14 are additionally patentable over Schluter as they currently recite that “each plug includes at least one bearing to reduce friction between the plugs and the sockets.” In the July 14, 2005, Office Action the Examiner utilized a fabricated definition of “bearing” to conclude that Schluter’s “spacing bridge 15” is a bearing. Specifically, the Examiner concludes that “bearing” must mean “a supporting element” and therefore everything is a bearing, regardless of the actual

definition of “bearing” in the art. To facilitate examination, Applicant has amended claims 11 and 14 to generally recite that the claimed bearing is operable to reduce friction. As Schluter’s supporting bridge 15 is neither a “bearing” based on any feasible definition of the word nor operable “to reduce friction,” Schluter fails to anticipate or render obvious claims 11 and 14.

Claims 15-17

Claims 15-17 are patentable for the same reasons discussed above relating to claims 1-14, namely that Schluter fails to disclose or suggest “a cover plate” or brackets that are operable for rigid attachment to a cover plate. Claims 15-17 are additionally patentable as claim 15 now generally recites a first bracket having a socket and a second bracket having a plug generally perpendicular to the socket. In contrast, Schluter’s “brackets” (anchoring members) and associated hinge pin 14, must be parallel in order for the “central bracket” (bridging profiles) to function (see FIGS. 1-3 and paragraph 0007).

Specifically, Schluter’s joint cover is for “walls and floors” and seeks to solve the problem of “high wall” joint covers which prohibit installation of ceramic tiles over the cover (paragraph 0006 and paragraph 0007). Thus, as shown in FIGS. 1-3, Schluter’s “brackets” (or associated hinge pins 14) must always be parallel in order for the coupled bridging profiles to achieve the desired “flat” profile for tile installation (see also paragraph 0007, right column, “These projecting elements extend in the longitudinal direction of the profile when spacing from each other....”).

In contrast, the present invention as claimed in claim 15 is operable to utilize a cover plate (which Schluter entirely lacks) to achieve a flat surface on a roof such that various bracket elements are desirably perpendicular to facilitate coupling with the central bracket. Thus, utilization of perpendicular brackets or bracket elements is not a mere rearrangement of Schluter’s parts as there is no motivation or suggestion to rearrange the anchoring members and hinge pins of Schluter to render Schluter unusable for its intended purpose- a flat joint surface for tile installation (see MPEP 2144.04(VI)(C)).

Additionally, claim 15 is further patentable as Schluter fails to disclose or suggest a first bracket having a socket and a second bracket having a plug. The Examiner concedes that Schluter does not disclose such (page 8) but concludes that such a configuration would be obvious as a mere rearrangement of parts. Although the Examiner is correct in that the mere reversal of parts (a socket instead of a plug) is generally not patentable by itself, the cited prior art reference (Schluter) must suggest, and not teach away from, the rearrangement (MPEP 2144.04(VI)(C), citing *Ex parte Chicago Rawhide Mfg*, 223 USPQ 351 (BPAI 1984)).

Here, Schluter teaches away from including sockets within the anchoring members (brackets), as the disclosed anchoring members must include the hinge pins 14 (considered to be “plugs” by the Examiner) and the coupled bridging profiles must include the corresponding sockets in order to enable the joint to provide a reasonable level surface for tile installation (paragraphs 0007 and 0009). Should one rearrange the hinge pins 14 and corresponding bridging profile sockets, as suggested by the Examiner, it would be difficult or impossible to maintain the required level surface due to the resulting loss in support provided to the bridging members when downward pressure, such as a footstep, is applied. Further, utilizing non-uniform bridging profiles (one with a plug and one with a socket) would provide an uneven and insecure surface for tile installation. As a result, Schluter cannot disclose or suggest these recited features, and claims 15-17 are therefore patentable.

Claim 16 is further patentable for the same reasons as claims 11 and 14 discussed above. Specifically, claim 16 has been amended to recite that “each plug includes at least one bearing along its entire length to reduce friction between the plugs and the sockets.” As Schluter’s supporting bridge 15 is neither a “bearing” based on any feasible definition of the word nor operable “to reduce friction,” Schluter fails to anticipate or render obvious claim 16. Further, even if the supporting bridge 15 is somehow a bearing operable to reduce friction, it is not along the entire length of the plug as recited in claim 16 and shown in FIG. 4.

Claims 18-25

Claims 18-24 as currently presented are patentable for the same reasons as claims 1-17, namely that Schluter fails to disclose or suggest “a cover plate,” brackets that are operable for rigid

attachment to a cover plate, or brackets (or bracket elements) that are generally perpendicular to each other. Claim 18 is further patentable as Schluter fails to disclose or suggest a bracket (anchoring member) having a socket for receiving a plug. As discussed above in detail, such a configuration is not a mere rearrangement of parts as Schluter teaches away from including plugs (hinge pins) within the bridging profiles as it would fail to provide the required level surface for tile installation.

Claims 19 and 22 are further patentable for the same reasons as claims 11, 14, and 16. Specifically, claims 19 and 22 have been amended to generally recite a plug having a bearing operable to reduce friction. As Schluter's supporting bridge 15 is neither a "bearing" based on any feasible definition of the word nor operable "to reduce friction," Schluter fails to anticipate or render obvious claims 19 and 22. Further, even if the supporting bridge 15 is somehow a bearing operable to reduce friction, it is not along the entire length of the plug as recited in claims 19 and 22.

Additionally, new claim 24 recites that the central bracket does not bridge a joint between the first surface and the second surface. Such a configuration enables the cover plate to bridge the joint between the surfaces. In contrast, Schluter's "central bracket" (bridging profiles) is utilized to bridge a joint, as Schluter lacks any form of a cover plate, and therefore cannot anticipate or render obvious claim 24.

New claim 25 recites that "the length of the first socket is less than the length of the first plug and the length of the second socket is less than the length of the second plug." Such a configuration facilitates positioning of the various brackets by eliminating the need for precise and time consuming alignment. In contrast, Schluter only discloses or suggests plugs and sockets having equal lengths due to Schluter's sole purpose of bridging gaps in a floor. For instance, if the plugs and sockets of Schluter were configured to have non-equal lengths, a gap would be formed between the bridging profiles and the anchoring members, thereby defeating the purpose of Schluter and potentially causing injury to individuals who step in the gap. Thus, Schluter cannot anticipate or render obvious claim 25.

Conclusion

The Examiner's cited reference, Schluter, fails to disclose or suggest various claimed features of the present invention, including a bracket operable to couple with a cover plate, a first bracket and a second bracket generally perpendicular to the first bracket, a bracket having a socket, a plug having a bearing to reduce friction, a rigidly attached third member and fourth member, etc. Further, Schluter expressly teaches away from these features due to Schluter's desire to create a flat floor covering for tile installation.

Thus, Applicant respectfully requests a Notice of Allowance. In the event of further questions, the Examiner is urged to call the undersigned. Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,

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